

EXHIBIT 12

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB
UKRAINIAN FUTURE CREDIT UNION, - -
Plaintiff,
vs. Case No. 2015-0524-CZ
ANDRII GARAK, et al,
Defendants.

-----/

PROCEEDINGS
BEFORE THE HONORABLE DIANE M. DRUZINSKI, CIRCUIT
JUDGE
Mount Clemens, Michigan - Monday, 21st of
November, 2016

APPEARANCES:
For the Plaintiff: JAMES W. BIGELOW (P42331)
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For the Defendant: WILLIAM R. SEIKALY (P33165)
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REPORTED BY: ANGELA M. LITTLE, CSR-6444, RPR
Certified Court Reporter
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PAGEWITNESSES: PLAINTIFF

None.

WITNESSES: DEFENDANT

None.

EXHIBITSADMITTED

None offered.

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Mount Clemens, Michigan
Monday, 21st of
November, 2016
At about 8:55 a.m.

(Court, Counsel and parties present.)

THE CLERK: Ukrainian Future Credit Union
versus Garak.

MR. BIGELOW: Good morning, your Honor.
For the record, James Bigelow appearing on behalf of
the plaintiff.

THE COURT: Good morning.

MR. SEIKALY: William Seikaly appearing on
behalf of the defendant Lidia Shibarov, your Honor.
I have a court reporter slip.

THE COURT: Good morning. This is your
motion on behalf of the defendant for summary
disposition.

MR. SEIKALY: It is, your Honor. On the
whole, I will rely on my brief. As the Court's well
aware this motion was brought before this Court,
entered a lengthy written opinion on the issue of
dismissing all claims other than the -- what the
Court identified as a questionable claim of
fiduciary duty but was going to allow two

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depositions to be taken. The plaintiff credit union
decided not to produce their witness and pursuant to
my motion indicated that the discovery would be
deemed closed so that's over.

THE COURT: Right.

MR. SEIKALY: As the parties admit, other
than an exhibit attached by the plaintiff, nothing
is new in this case. I'd like to limit my argument
on the whole, your Honor, to the issues raised in
the response we received Friday.

THE COURT: Okay.

MR. SEIKALY: My first point is under
Argument, your Honor. It's says on Page 7,
that Mrs. Shibarov's motivation and her conduct in
this case is clear because she sold her home to the
actual borrower. Let's see. That only ignores
every document in this case, every single document.
There is not a sole document that names Mr. Garak as
the -- Mr. Holyk, I'm sorry, as the purchaser, but
ignores something else, your Honor. It ignores this
Court's opinion in which the Court indicated that he
had other than providing some additional collateral,
had nothing to do with the loan. Heaven forbid we
should ignore the facts, but perhaps we should start
paying attention to this Court's order, finally,

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maybe in this case. Then there is Daria Brown's
affidavit, your Honor, at Exhibit 10. I'm more than
a little offended by this affidavit that very
carefully goes through and says I have evaluated the
testimony in this case. I have evaluated the
exhibits and I work there and I'll tell you that
Shibarov's wrong and the Credit Union's right. Now,
let us assume for a moment that that might qualify
as an affidavit. Sounds to me like it might be an
expert affidavit. Here's a problem. I took Ms.
Brown's deposition. She wasn't offered as an
expert, I didn't ask her expert questions, she's not
qualified as an expert, but heaven forbid we should
even get into that, not to mention the fact that she
ignores the rulings of this Court in rendering her
opinion.

Finally, your Honor, and I'm sorry for
going on like this but we're already in the Court of
Appeals, we're going to be back in the Court of
Appeals again, and I'm a little tired of this. I
want to make sure that the record is complete. He
relies, Credit Union relies on three cases in its
brief. I happen to know from experience that this
Court reads all this stuff, but I want to point out
that the *Rose* case they rely on is an auctioneer

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1 hired to sell some property who fails to conduct a
 2 scheme that with the seller of the property and they
 3 sue for the money they would have got had the
 4 auctioneer conducted this scheme. And, the court
 set a pot on both your houses. We're not going to
 enforce this agreement. I cite that case and I
 think it's important because, amongst other things
 he realizes on it, while criticizing me for citing
Rapistan v Michaels, 203 Mich App 301, 1994, he says
 in reality this isn't an equity case, misses the
 point, your Honor, anytime, anytime we're talking
 about a breach of fiduciary duty, it speaks to the
 Court's equitable power. I've never been involved
 in a case in which the fingernails, much less than
 the hands, were more dirty than this. There's been
 a concerted effort not to provide documents and not
 provide testimony. That's uncleaned hands.
 Finally, your Honor, and quickly, he relies
 on *Stevenson Title* tells a lot, your Honor.
Stevenson v The Detroit Trust Company doesn't help
 this case. That's a trust company. No joke it's a
 fiduciary relationship. But my favorite is *Burton v*
Burton. And I read that case three times and I
 decided I'm doing something wrong so I used my handy
 dandy computer that people tell I'm no good at using

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1 and did a word search for the word "fiduciary."
 2 Guess what, it's not there. Had to do with
 3 collecting rents, whether an agent who collects rent
 4 has an obligation to give the rent to the owner.
 5 Term fiduciary relationship's not even in there.
 6 Your Honor, this case has gone on too long. There's
 7 nothing new in it. My client didn't deserve to
 8 spend the outrageous amount of fees that she had to
 9 spend in dealing with this case. I'll rely on my
 10 motion for the remainder of my argument other than
 11 this. After walking through every theory presented
 12 in this case and presenting the documents that were
 13 of record in this case and some that had not been
 14 produced, after walking through the entire complaint
 15 with Mr. Yakymowych, I asked him what I thought was
 16 a fairly relevant question, why is my client in this
 17 case. Because you've admitted the fact that there
 18 is the evidence that existed do not fit with the
 19 complaint. A verified complaint that he signed and
 20 he said at this point I don't know. You mean
 21 Mr. Holyk was taking advantage of everything, that's
 22 when the case should have been dismissed, your
 23 Honor.

THE COURT: Mr. Yakymowych is the CEO?
 MR. SEIKALY: Thank you, your Honor.

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1 Mr. Yakymowych is the CEO and the treasurer of the
 2 Ukrainian Credit Union. The only other thing I
 3 would address, your Honor, I've asked for a
 4 determination that this was a frivolous claim.
 5 Different courts handle this in different ways. Some
 6 courts have read the statute to say that you have to
 7 bring that motion after the summary disposition
 8 motion. Some hear it as part of the summary
 9 disposition motion. What is your pleasure, your
 10 Honor, other than not have us in front of you?
 11 THE COURT: After.
 12 MR. SEIKALY: Thank you, your Honor.
 13 THE COURT: Any response, counsel?
 14 MR. BIGELOW: Yes, your Honor. I'll be
 15 brief. Beyond all the hyperbole and exaggeration,
 16 the straw purchasers in this case indicated that
 17 they didn't signed anything until they showed up to
 18 sign the documents. The asset and income
 19 information was never supplied by them. It turns
 20 out to be completely false. Mrs. Shibarov they
 21 alleged inputted this information that she probably
 22 obtained from Mr. Holyk or someone else, we don't
 23 know. That's a factual issue for the jury to
 24 determine. She certainly had motive. She sold her
 25 home to Mr. Holyk. We believe it's part of this

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1 transaction even though it's only shortly thereafter
 2 that she consummated that deal. There's no evidence
 3 their house was ever on the market before she moved.
 4 As far as all these documents that Mr. Seikaly
 5 didn't get, he's illegally obtained, as the Court's
 6 aware, a number of other documents, including a
 7 roster containing Social Security numbers of all of
 8 the employees and board members of the credit union
 9 and he published them with the Court where anybody
 10 can find them.

11 Your Honor, there's factual issues here to
 12 be determined how did that -- there certainly is a
 13 fiduciary duty. If a loan officer does not have a
 14 fiduciary duty to obtain accurate income and asset
 15 information regarding a loan of this size, I don't
 16 know who does have a fiduciary duty.

17 THE COURT: Any brief response,
 18 Mr. Seikaly?

19 MR. SEIKALY: Very, your Honor. One, there
 20 is this affidavit or this testimony out there from
 21 the Garak. The problem is that the tax returns, the
 22 1040s that were in the file --

23 THE COURT: Right.

24 MR. SEIKALY: -- indicate that the tax,
 25 that the information there is accurate. So,

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1 secondly, your Honor, there's an affidavit in the
 2 file. We didn't include it in this, but it was a --
 3 it was a member of the Ukrainian community that
 4 connected my client with Mr. Holyk with nothing to
 do with this law and there's an affidavit of that in
 this file. But, your Honor, think about this.
 7 Fiduciary duty for somebody who is no more than a
 8 scrod. Now, Daria Brown has admitted that. She has
 9 said, We just take the information down. We can't
 10 sign checks. We can't bind the credit June. We
 11 can't approve the loan, on and on and on and on and
 12 on. And, your Honor, there is not a scintilla,
 13 there's not a scintilla of evidence that she did
 14 anything wrong. And how do we know that, because
 15 the law, number one, requires, as I've cited in my
 16 brief, the law requires that no one person can
 17 approve this loan. But, we know in this case that
 18 it went to state regulators, federal regulators to
 19 the underwriter CVS, CenCorp, I'm not sure what
 20 they're called, and then to the loan committee with
 21 the same documents. Not just the numbers that
 22 Mr. Garak said they filled out, but with the 1040
 23 tax returns.

24 THE COURT: I've reviewed the motion for
 25 summary disposition as well as the response and

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1 taken into consideration the oral argument, and I am
 2 granting defendant's motion for summary disposition
 3 under (C)(10). There is no genuine issue of
 4 material fact about the fiduciary relationship
 5 existing between Defendant and Plaintiff Credit
 6 Union. The documents that were submitted in these
 7 briefs clearly establish that the loan was
 8 ultimately approved by the committee which reviewed
 9 documentation required for the loan approval and
 10 herein. Underwriter testified that the tax return
 11 of the Garaks were in there and that furthermore
 12 there's evidence that Defendant Shibanov had no
 13 authority to approve a loan, process a loan, make a
 14 check, et cetera. I don't find that there's any
 15 evidence in support of a fiduciary duty.
 16 Nonetheless, in terms of the breach, there's also
 17 evidence that Mr. Yakymowych said that the reason
 18 that they lost money on the loan is because
 19 Mr. Holyk I believe committed waste on the property.
 20 So in terms of breach and proximate cause, there's
 21 also no evidence for that. Plaintiff's assertion
 22 about the motivation regarding the house, selling,
 23 all in apparently a short timeframe is nothing more
 than speculation at this point.

25 So the Court is going to respectfully grant

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1 the Defendant's motion for summary disposition under
 2 (C)(10).

3 MR. BIGELOW: Thank you, your Honor. I
 4 will type an order.

5 MR. SEIKALY: Thank you, your Honor.

6 THE COURT: You're welcome.

7 (At 9:08 a.m., proceedings concluded)

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1 STATE OF MICHIGAN)

2) SS

3 COUNTY OF MACOMB)

6 CERTIFICATE OF COURT REPORTER

I, Angela M. Little, Certified Court
Reporter, of the Sixteenth Judicial Circuit, in the
State of Michigan, do hereby certify that the
foregoing pages, 1 through 13, inclusive, comprise a
full, true, and correct transcript of the
proceedings had in the matter of UKRAINIAN FUTURE
CREDIT UNION, Plaintiff, versus ANDRII GARAK, et al,
Defendants, Case No. 2015-0524-CZ, on Monday,
21st of November, 2016.

19 /s/ Angela M. Little
ANGELA M. LITTLE - CSR-6444, RPR

DATED: 5/5/17

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